

# The European Pillar of Social Rights: What is being proposed and the challenges ahead

 [blogs.lse.ac.uk/europpblog/2017/01/23/european-pillar-of-social-rights/](https://blogs.lse.ac.uk/europpblog/2017/01/23/european-pillar-of-social-rights/)

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*In spring 2016, the European Commission outlined some core principles for the creation of a new European Pillar of Social Rights. [Zane Rasnača](#) assesses what we know about the framework so far and some of the challenges that lie ahead in putting it into practice.*



For those working on social policy and labour matters in the EU, the 'European Pillar of Social Rights' (EPSR) has been the topic of the last 12 months. Those working outside these fields, on the other hand, may never have even heard of it. However, in both cases, figuring out what exactly this so-called 'Social Pillar' will entail may well be pure guesswork.

The end of the public consultation on the initiative was in December 2016 and on 23 January the European Commission will host a [European conference](#) on the topic. Therefore, the time is ripe for hypothesising about the legal form the EPSR could and should take and what its future consequences may be.

## What is proposed?

The Pillar outline proposed by the Commission in spring 2016 sets out 20 'areas' for action that range from 'wages' to 'equal opportunities', from 'health and safety' to 'unemployment benefits'. The EU has very disparate legislative competences in these areas, with a clear legislative mandate in some that is nevertheless lacking in others. In all these 20 areas the Commission has formulated some principles to be adhered to or pursued.



**Image credit:** [European Commission](#).

For example, under 'wages' we can find a commitment that all employment should be fairly remunerated to ensure a decent standard of living. The principles included often touch upon aspects of fundamental social rights already

included in the EU Charter or in secondary legislation. They concern diverse matters, but often fail to concretise what type of action or outcomes the Commission actually wants to achieve.

Even less clear than the content is the future legal form of the EPSR. So far it seems to be a set of principles. However, whether they will be legally binding and in what type of legal form they will be captured remains unclear. The supporting documents and WP 2017 have referred to the EPSR as: “an expression of essential principles”; “a framework of principles to foster a fair playing field”; “a reference framework to screen the employment and social performance of member states”; “a policy compass”; “a compass for renewed convergence within the euro area”; “an occasion to revisit the *acquis* and to identify possible areas for future action”

In addition, the WP 2017 suggests that the proposal due in spring 2017 will consist not only of the proposal for the Pillar but also related legislative and non-legislative initiatives. Beyond these limited indicators, we therefore do not know much about either the form or exact content of the EPSR.

### **Form follows function or function follows form?**

In spite of the scarce information available, the deadline for the proposal’s official launch (in spring 2017) is rapidly approaching and it is therefore time to contemplate the Pillar’s possible form. There are a wide set of options that could involve any variation or mix of the following:

1. A legally binding set of rights at the level of primary or secondary law.
2. A legally binding set of principles (adopted by either the EU institutions or Eurozone countries or both in order to establish a framework for screening and updating EU social policy *acquis*).
3. A set of legislative proposals (revisions with the idea of upgrading social protection, but also new proposals).
4. A policy document setting out indicators or benchmarks that might be streamlined in policy coordination processes like the European Semester. The Commission has even suggested that these benchmarks might be legally binding.

If the first option is used, then the question arises whether this project is compatible with or brings any added value to existing social rights (in the EU Charter, secondary EU law, and also international instruments like ILO Conventions). Another question is whether it could be (realistically) adopted as part of the primary law (requiring Treaty changes) or part of the secondary law and where it would fit in with the current legal framework already in place.

In order to deliver tangible social change, a mix of the other available options might be more promising. The Pillar could serve as a sort of “*social REFIT*”, accompanied first by a set of secondary law measures and second by a set of either benchmark or performance indicators to be streamlined in either existing (e.g. European Semester) or new policy coordination mechanisms. In such a case the Pillar itself could be adopted as: an interinstitutional agreement (Article 295 TFEU); an intergovernmental agreement among the Eurozone countries; a Council Decision; or a Resolution of the European Council (by analogy with Stability and Growth Pact). Depending on the choice, it would be binding on either only EU institutions or both EU institutions and Member States.

One factor that weighs heavily on the choice of legal form is the intended scope of the EPSR. So far, the Commission has proposed that the Pillar will apply only to the Eurozone countries. Besides contributing to the worries about an increasingly multi-speed Europe, this political choice also [suggests](#) that the objectives of the whole project might be economic (e.g. competitiveness) rather than social (i.e. social progress and strengthening of the European Social model)\*

The intended scope also might lead to the adoption of the Pillar on the legal basis of the EMU (i.e. under Article 136 TFEU). In such a case, if, as the WP 2017 suggests, the EPSR will be accompanied by legislative initiatives proposed on the legal basis found in the Social Policy title in the Treaty, these might be directed towards the

economic rather than the social rationale because of the EPSR. In this case there will be a conflict between the EPSR, underpinned by economic concerns, and accompanying initiatives that, if adopted under the Social Policy title, should be underpinned solely by social concerns.

The Treaties' limitations on the EU's legislative competence will also affect the choice of instrument. For example, while there is clear legislative competence concerning health and safety at work, the EU can only coordinate policies concerning minimum income via soft law instruments. The limited competence might require adjusting the choice of the legal instrument not only according to the intended scope of the Pillar, but also to what is allowed at the EU level.

The issue of competence, together with the intention to establish the EPSR within the EMU and limit its scope (at least initially) to the Eurozone countries, directly limits the available options. Whichever solution is chosen, it is important to ensure that the objectives of the EPSR and of the accompanying initiatives do not conflict due to their legal basis and framework, and that the adoption of the EPSR does not lead to the circumvention of the EU's social objectives and obligations.

### **A brave new world?**

The EPSR initiative came about as part of the drive for a deeper and fairer EMU, as [an initiative](#) for Europe to earn a “triple-A on social issues”. The key question is whether this endeavour will actually place the social principles inside the processes of European economic governance or whether it will distort the social objectives by subjecting them to an economic rationale. The Pillar's embeddedness in the economic governance framework raises not only political but also legal questions, as argued above.

It is a welcome initiative but only in a form that would bring added value to the existing EU instruments and deliver positive results. It is therefore not only the content which is important but also the form, as it will determine what exactly the EPSR is capable of delivering. The conundrum we are facing at the moment is that it is difficult to determine the form until we know the content, and until the form is clear, the limitations to the content remain uncertain.

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*Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.*

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